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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES ROSKIND, an individual,

Plaintiff,

Case No. CV-S-05-0825-RCJ-RJJ

v.

AARON EMIGH, an individual; and
RADIX LABS LLC, a Nevada limited liability
company,

Defendants.

JOINT SETTLEMENT STATEMENT

On December 8 and 9, 2008, the Court conducted a process to appraise and distribute the issued patent and patent applications of Radix Labs, LLC ("Radix") to its members as a result of the Court's order dissolving Radix. The members of Radix – Plaintiff Dr. James Roskind ("Dr. Roskind") and Defendant Mr. Aaron Emigh ("Mr. Emigh") – used a bidding process at the Court's direction to reach mandatory, court ordered appraisal values to be placed upon the asset groups, and to determine the distribution of assets, pursuant to dissolution (the "Distribution Process"). On December 9, 2008, the parties appeared before this Court and submitted their distribution of the issued patent and patent applications, which resulted from the completion of the Distribution Process. *See Results of Court Supervised Bidding on the Radix Patent Portfolio* attached hereto as **Exhibit "A"**.

At the December 9, 2008 hearing the Court instructed the parties to submit a settlement statement identifying "who's entitled to what in the form of distribution," a "revised judgment which states exactly what the Court did and the conclusion," and if need be a request for an Emergency Hearing to resolve any open issues. (Transcript December 9, 2008, p. 6, ll. 13-17).

The Court conducted a hearing to address the remaining open issues on February 2, 2009, at 9:00 a.m.

Open Issues

Three open issues were resolved by the Court:

1. The amount of Mr. Emigh's post trial United States Patent and Trademark Office (the "USPTO") expenses attributable to Radix.
2. Attorneys' fees, if any, to be paid by Mr. Emigh to Dr. Roskind.
3. Costs, if any, to be taxed by the Court.

Determination of the first issue was necessary to conclude the payment of creditors in the manner set forth below, and both parties submitted briefs regarding the expenses for which Mr. Emigh seeks reimbursement. The issue was whether USPTO Office Action Response Extension Fees which Mr. Emigh incurred pursuant to C.F.R. 1.17 after the trial are reimbursable expenses. The Court determined that such expenses were reimbursable expenses of Radix. The Court granted the Motion for Attorneys' Fees and awarded Dr. Roskind attorneys' fees against Mr. Emigh in the amount of \$40,000. The Court awarded Dr. Roskind his costs of suit against Mr. Emigh based on a previously submitted draft Bill of Costs. A copy of the Bill of Costs, which is to be filed herein, is attached hereto as Exhibit 1.

In addition, the Court addressed certain language of this Settlement Statement and of the assignments.

Distribution of the Radix Patent Portfolio.

The Distribution Process resulted in Patent Groups A, C, K, L, P, R, T, and U being distributed to Dr. Roskind (the "Roskind Group"), and Patent Groups B, D, E, F, G, H, I, J, M, N, O, Q, and S being distributed to Mr. Emigh (the "Emigh Group"), as represented in the tables below:

<i>Group</i>	<i>PTO Serial/Registration Number</i>	<i>Internal Docket Number</i>	<i>Assignee</i>
A	12/001692	CA-039	Dr. Roskind
A	10/938487	PA-006	Dr. Roskind
A	(issued) 7,330,112	PA-007	Dr. Roskind
A	10/938198	PA-008	Dr. Roskind
A	10/937919	PA-009	Dr. Roskind
C	10/917839	PB-005	Dr. Roskind
K	11/048514	PJ-023	Dr. Roskind
K	11/048504	PJ-024	Dr. Roskind
L	11/054805	PA-025	Dr. Roskind

<i>Group</i>	<i>PTO Serial/Registration Number</i>	<i>Internal Docket Number</i>	<i>Assignee</i>
P	11/116781	PA-031	Dr. Roskind
R	11/178161	PA-033	Dr. Roskind
T	11/261430	PB-037	Dr. Roskind
U	11/394764	PA-038	Dr. Roskind

<i>Group</i>	<i>Internal Docket Number</i>	<i>Assignee</i>
B	PA-001	Mr. Emigh
B	PA-002	Mr. Emigh
B	PA-003	Mr. Emigh
D	PA-004	Mr. Emigh
E	PQ-010	Mr. Emigh
E	PQ-011	Mr. Emigh
F	PQ-012	Mr. Emigh
F	PQ-013	Mr. Emigh
F	PQ-014	Mr. Emigh
G	PA-015	Mr. Emigh
H	PJ-016	Mr. Emigh
I	PA-017	Mr. Emigh
I	PA-018	Mr. Emigh
I	PA-019	Mr. Emigh
I	PA-020	Mr. Emigh
I	PA-021	Mr. Emigh
J	PA-022	Mr. Emigh
M	PA-026	Mr. Emigh
M	PA-027	Mr. Emigh
N	PJ-028	Mr. Emigh
N	PJ-029	Mr. Emigh
O	PA-030	Mr. Emigh
Q	PA-032	Mr. Emigh
S	PB-034	Mr. Emigh
S	PB-035	Mr. Emigh
S	PB-036	Mr. Emigh

The appraised value assigned to the Roskind Group totaled \$525,000.00 (five hundred twenty-five thousand dollars), and the appraised value assigned to the Emigh Group totaled \$625,000.00 (six hundred twenty-five thousand dollars). Because the issued patent and patent applications of Radix are being distributed to the LLC's members pursuant to a court-ordered dissolution, rather than purchased or sold, Mr. Emigh shall pay Radix an equalization payment of

1 \$50,000.00 (the "Equalization Payment"), which is one-half of the difference between the
 2 assigned value of the Roskind Group and the assigned value of the Emigh Group. Radix shall
 3 distribute the Equalization Payment solely to Dr. Roskind prior to the distribution of the
 4 company's assets to Dr. Roskind and Mr. Emigh. As a result of the distribution of the Roskind
 5 Group, the Emigh Group, and the Equalization Payment, Dr. Roskind and Mr. Emigh will each
 6 receive a net assigned value of \$575,000.00 resulting from the division and distribution of the
 Radix Patent Portfolio.

7 With respect to the issued patent and all of the distributed patent applications, the parties
 8 further agree as follows:

9 The party receiving a particular patent or patent application ("Assignee")
 10 shall not include or move additional content (text, or figures, or concepts) from
 11 Radix Docket Numbers RA-013, RA-018, RA-021, or RA-026 (the "Shared
 12 Provisional Applications"),¹ into any of the current applications, a derived
 13 continuation of any of the current applications, divisional patent applications, or
 14 continuation in part patent applications that claim priority to a Shared Provisional
 15 Application, or as part of any response to any correspondence or action from the
 USPTO regarding an application that claims priority to a Shared Provisional
 Application.

16 The party not receiving a particular patent or patent application
 17 ("Assignor") shall not submit additional information to the USPTO in relation to
 18 any patents or patent applications of the Assignee. Assignor shall engage in no
 19 further prosecution of any of the patents or patent applications of the Assignee.
 20 Assignor shall forthwith inform Assignee of any purchase or license inquiry,
 21 USPTO correspondence, or information potentially material to patentability per
 22 C.F.R. § 1.56, relating to an application which has been assigned to Assignee.
 23 Assignor shall not engage in any activity on behalf of himself or others to
 24 invalidate any of the patent or patent applications assets received by the
 25 Assignee. Assignor shall not participate in, or engage in any activity to interfere
 26 with, impair or negatively impact the prosecution, enforcement, or validity of the
 patents and patent applications received by the Assignee, or continuations,

27 ¹ For the Court's reference, the Patent Applications to which the Shared Provisional
 Applications relate are in Patent Groups D, I, J, L, M, P, Q, and R in the charts on pp. 2 and 3 of
 this Joint Settlement Statement.

1 divisional patent applications, or continuations in part, reissues, or other
 2 derivative applications thereof. Assignor shall execute all papers and documents
 3 and, entirely at the Assignee's expense, perform any acts which are reasonably
 4 necessary in connection with the prosecution of said patent or patent application,
 5 as well as any derivative applications thereof, foreign applications based thereon,
 6 and/or the enforcement of patents resulting from such applications.

7 The Court further ruled at the hearing on February 2 that the assignments by which the
 8 distribution is to be accomplished should reference the judgment in this case and this Settlement
 9 Statement.

10 **Payment of Creditors.**

11 Although both parties expressed objections to payment of each other's expenses in the
 12 course of their disputes prior to trial, neither party contested the other party's pretrial expenses at
 13 trial. The only creditors of Radix are Dr. Roskind and Mr. Emigh. Radix is indebted to Dr.
 14 Roskind for: (1) pre-trial expenses of \$40,127.80 (forty thousand one hundred twenty-seven
 15 dollars and eighty cents) (the "Roskind Expenses"); and (2) loans of \$15,000.00 (fifteen thousand
 16 dollars) and \$25,000.00 (twenty-five thousand dollars) which Dr. Roskind made to the company,
 17 plus accrued interest (the "Loan Balance.") Including such interest, the Loan Balance as of
 18 February 2, 2009 will be \$52,626.00 (fifty-two thousand six hundred twenty-six dollars),
 19 accruing thereafter by \$5.32 *per diem*. The combined total Radix owes to Dr. Roskind for the
 20 Roskind Expenses and the Loan Balance, as of February 2, 2009, will accordingly be \$92,644.96
 21 (ninety-two thousand six hundred forty-four dollars and ninety-six cents).

22 Radix is indebted to Mr. Emigh for pre-trial expenses of \$20,525.86 (twenty thousand
 23 five hundred twenty five dollars and eighty-six cents) (the "Emigh Pre-Trial Expenses."). Mr.
 24 Emigh also sought reimbursement of post-trial USPTO expenses of \$12,240.00 (twelve thousand
 25 two hundred and forty dollars), of which \$9,810.00 (nine thousand eight hundred ten dollars)
 26 was disputed by Dr. Roskind (the "Disputed Emigh Post-Trial Expenses,") and \$2,430 (Two
 27 thousand four hundred thirty dollars) was not disputed by Dr. Roskind (the "Agreed Emigh Post-
 Trial Expenses.") Accordingly, the agreed expenses of Mr. Emigh (consisting of the Emigh Pre-
 Trial Expenses and the Agreed Emigh Post-Trial Expenses) total \$22,955.86 (twenty-two
 thousand nine hundred fifty-six dollars and eighty-six cents). Dr. Roskind disputed an additional
 \$9,810.00 (nine thousand eight hundred ten dollars) of post-trial USPTO Office Action Response
 Extension Fees claimed by Mr. Emigh. However, at the hearing on February 2, the Court

ordered that the disputed Emigh Post-Trial Expenses be paid by Radix. As a result, Emigh's Radix Expenses total \$32,765.86

Radix does not have sufficient assets to pay these debts and the distribution of the patent portfolio will not generate cash to pay the debts. Accordingly, Dr. Roskind and Mr. Emigh shall each make cash contributions to Radix in the amount equal to half of the total debt Radix owes to Dr. Roskind and Mr. Emigh (the "Debt Retirement Payment"). As of February 2, 2009, each party's respective half of the Debt Retirement Payment is accordingly \$62,759.83 (sixty-two thousand, seven hundred fifty-nine dollars and 83 cents). Once Dr. Roskind and Mr. Emigh make their Debt Retirement Payments, Radix shall pay the debts owed to Dr. Roskind and Mr. Emigh.

Distribution of Cash.

Radix additionally had \$5,998.74 (five thousand nine hundred ninety-eight dollars and seventy-four cents) in cash in two accounts at Comerica Bank² and an unearned retainer of \$1,325. (one thousand three hundred and twenty-five dollars) on account with the law firm of Van Pelt, Yi and James. These funds have been aggregated in account #1892885987, and total \$7,323.74 (seven thousand three hundred twenty-three dollars and seventy-four cents). The cash shall be distributed equally to Dr. Roskind and Mr. Emigh upon the distribution of the company's assets to Dr. Roskind and Mr. Emigh.

Results of Asset Distribution and Payment to Creditors.

Based on the foregoing payments to creditors and distribution of assets, after contributing his half of the Debt Retirement Payment, Dr. Roskind receives (i) the assigned value of \$575,000.00 (five hundred seventy five thousand dollars) comprised of the distribution of the patent portfolio and his receipt of the Equalization Payment, plus (ii) a distribution of one half of the existing cash, plus (iii) the sum of the Roskind Expenses and Loan Balance (which equals \$92,636.70 (ninety-two thousand six hundred thirty-six dollars and seventy cents).

After contributing his half of the Debt Retirement Payment, Mr. Emigh receives (i) the assigned value of \$575,000 (five hundred seventy five thousand dollars), comprised of the distribution of the patent portfolio and his payment of the Equalization Payment, plus (ii) a distribution of one half of the existing cash, plus (iii) \$32,765.86 (thirty-two thousand seven hundred sixty-five dollars and eighty-six cents) for reimbursement of Mr. Emigh's expenses.

² Radix had two accounts at Comerica Bank UNIVERSITY DIVISION - PALO ALTO, account #1892885987, containing \$5,993.74 and account #18927898274, containing \$5.

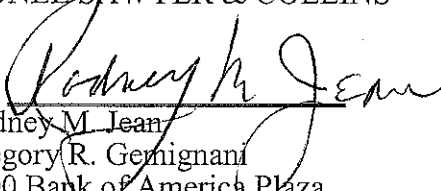
Accordingly, the distribution set forth herein pays creditors of Radix in full and distributes the assets of Radix equally to Dr. Roskind and Mr. Emigh.

Simultaneous Payment and Distribution

After the Equalization Payment and the Debt Retirement Payments have been made, the remaining transactions (namely, the Distribution of Assets, the Payment of Creditors, and the Distribution of Cash) shall occur simultaneously. The transactions above shall occur within two business days after entry of an order determining the issues presented in the Emergency Hearing.

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